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16/ 7321

(1)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

Second Appeal No. 545 Of 2005.

APPELLANT :- Shri Balaji Swami (Shri Dudhadhari Math)
PLAINTIFF Registered Public Trust, Raipur, through Rajeshri Mahant Ramsunder Das, Guru Late Shri Mahant Vaishnavdasji, Dudhadhari math, Raipur, Tahsil and District Raipur (Chhattisgarh)

P.R. No. 3064/05
Presented by Shri J.K. Gupta
dated 01/12/05

V E R S U S

RESPONDENTS :- 1. Biselal, son of Dhanwar Sonwani,
DEFENDENTS Resident of Near Station, Abhanpur, Tahsil Abhanpur, District Raipur (C.G.),

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2. State of Chhatttisgarh, Through Collector Raipur, District Raipur (Chhattisgarh).

APPEAL UNDER SECTION 100 OF CODE OF CIVIL PROCEDURE

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक S.A.No. 545/2005 **/सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14.08.2006

Shri H.B. Agrawal, Sr. Advocate with Ku. Sangeeta Mishra, counsel for the appellant.

Arguments heard on admission.

Order dictated as follows:-

Oral Order

This is the plaintiff's second appeal, filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 30.08.2005 passed in Civil Appeal No. 15-A/2005 by the District Judge, Raipur (C.G.) arising out of judgment and decree dated 15.03.2005 passed in Civil Suit No. 457-A/2002 by the VIth Civil Judge, Class-I, Raipur (C.G.). The plaintiff lost in both the Courts.

The brief facts are that the plaintiff, appellant herein, is a Registered Public Trust which has certain landed property in village Abhanpur, District- Raipur. The allegations are that the defendant, respondent No.1 herein, encroached upon 2944 Sq.Ft. of Khasra No. 499/92 total area 11.945 hectares as he raised certain construction over it in the year 1988. Since the encroachment was not removed, the plaintiff was constrained to file a suit for eviction and also for mesne profit of Rs.1,000/- along with future mesne profit till the date of recovery of possession. The defendant raised the plea that he has not encroached upon any portion of Khasra No. 499/92 as he is in

XI-HC-22

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possession of Khasra No. 30/25 which he purchased from one Shyam Bai in the year 1983.

The trial Court framed various issues in this case and after recording evidence came to conclusion that the plaintiff could not establish that defendant No.1 has encroached upon 2944 Sq.Ft. area of suit land of Khasra No. 499/92. The suit was dismissed on this ground. This judgment and decree, passed by the trial Court, was challenged in appeal. The appellate Court also held that the plaintiff could not establish by sufficient evidence to hold that any portion of suit land was encroached by defendant No.1 and ultimately the appeal was also dismissed. It is against this judgment and decree passed by the lower appellate Court, this second appeal has been filed before this Court.

Learned counsel for the appellant argues that the finding in relation to encroachment is perverse.

I have gone through the records of the Courts below. It appears that for proving the factum of encroachment, the plaintiff has examined one Prabhu Ram as PW-1 and has also examined one Dhanendra Singh as PW-2. Though it comes in the oral evidence of these two witnesses that the defendant No.1 had encroached upon 2944 Sq.Ft. of Khasra No. 499/92 which was the property of the Trust but except their oral evidence which is too vague and general, no steps have been taken from the side of the plaintiff to prove the encroachment by defendant No.1. In this

XI-HC-22

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case, neither a demarcation was done nor any earlier demarcation report showing encroachment was filed by the plaintiff.

In the opinion of this Court, in the facts and circumstances of the case, the trial Court as well as first appellate Court have rightly recorded the finding that the plaintiff could not establish that defendant No.1 has encroached upon any portion of the suit land as pleaded in the plaint.

I do not find any perversity in the concurrent finding recorded by the two Courts below. No substantial question of law involves for consideration in this appeal. The appeal has no merits and the same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge